

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRYL WILLINGHAM,

No. C 11-01688 CW (PR)

Plaintiff,

ORDER OF DISMISSAL WITH LEAVE
TO AMEND; DIRECTING CLERK OF
COURT TO PROVIDE PLAINTIFF WITH
CIVIL RIGHTS COMPLAINT FORM

v.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

Defendants.

INTRODUCTION

Plaintiff, a state prisoner, initiated the instant pro se civil rights action on April 7, 2011, when he filed a document seeking immediate injunctive relief under 42 U.S.C. § 1983. Since then, Plaintiff has filed in this action a civil rights complaint, an amended complaint, eight documents titled "Statement of Claim" and sixteen letters. These pleadings, documents and letters range in length from 1 to 83 pages, and in some instances include numerous exhibits.

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must
2 allege two essential elements: (1) that a right secured by the
3 Constitution or laws of the United States was violated, and
4 (2) that the alleged violation was committed by a person acting
5 under color of state law. See West v. Atkins, 487 U.S. 42, 48
6 (1988). Under § 1983, liability may be imposed on an individual
7 defendant only if the plaintiff can show that the defendant
8 proximately caused the deprivation of a federally protected right.
9 See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

10 For the reasons discussed below, Plaintiff's amended complaint
11 (docket 9), which the Court construes as the operative pleading
12 herein, will be dismissed with leave to amend. See London v.
13 Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981) (holding
14 amended complaint supersedes initial complaint and may not
15 incorporate by reference any parts of original complaint).

16 DISCUSSION

17 It is exceptionally difficult to glean from Plaintiff's
18 numerous pleadings, documents and letters what his claims are and
19 what relief he seeks. In particular, Plaintiff's handwriting is so
20 difficult to read that the Court can barely decipher what Plaintiff
21 has written. Further, nowhere does Plaintiff state succinctly and
22 clearly what injury he has suffered, who caused such injury and
23 what he would like the Court to do. Instead, Plaintiff narrates
24 lengthy legal and factual arguments with no concise statement of
25 the claims themselves. Additionally, Plaintiff refers to various
26 types of relief, some of which appear to pertain to the validity of
27 his criminal conviction and others which appear to pertain to the
28 conditions of his confinement at San Quentin State Prison.

1 Rule 8(a) of the Federal Rules of Civil Procedure requires
2 that the complaint set forth "a short and plain statement of the
3 claim showing that the pleader is entitled to relief." A complaint
4 that fails to state the specific acts of the defendant that
5 violated the plaintiff's rights fails to meet the notice
6 requirements of Rule 8(a). See Hutchinson v. United States, 677
7 F.2d 1322, 1328 n.5 (9th Cir. 1982). Additionally, Rule 8(e)
8 requires that each averment of a pleading be "simple, concise, and
9 direct." See McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996)
10 (affirming dismissal of complaint that was "argumentative, prolix,
11 replete with redundancy, and largely irrelevant"). While the
12 federal rules require brevity in pleading, a complaint nevertheless
13 must be sufficient to give the defendants "fair notice" of the
14 claim and the "grounds upon which it rests." Erickson v. Pardus,
15 127 S. Ct. 2197, 2200 (2007) (quotation and citation omitted).

16 Here, Plaintiff's claims cannot proceed as plead because
17 Plaintiff has not clearly and concisely set forth his claims
18 against Defendants or directly linked Defendants to his
19 allegations. In particular, Plaintiff refers to numerous
20 individuals in his pleadings, including individuals who are not
21 named as Defendants, and fails adequately to link those who are
22 named as Defendants to an identifiable injury. Additionally, while
23 Plaintiff does directly link some individual Defendants to some of
24 his allegations, the allegations are so lengthy and repetitive that
25 the Court cannot readily determine all of the injuries for which
26 each Defendant allegedly is liable.

27 Further, many of Plaintiff's claims appear to be unrelated. A
28 plaintiff may properly join as many claims as he has against an

1 opposing party. Fed. R. Civ. P. 18(a). Nevertheless, while
2 multiple claims against a single party may be alleged in a single
3 complaint, unrelated claims against different defendants must be
4 alleged in separate complaints. See George v. Smith, 507 F.3d 605,
5 607 (7th Cir. 2007) (finding, under Rule 18(a), prisoner improperly
6 brought complaint raising fifty distinct claims against twenty-four
7 defendants). Further, parties may be joined as defendants only if
8 "there is asserted against them jointly, severally, or in the
9 alternative, any right to relief in respect of or arising out of
10 the same transaction, occurrence, or series of transactions or
11 occurrences and if any question of law or fact common to all
12 defendants will arise in the action." Fed. R. Civ. P. 20(a). As a
13 practical matter, this means that claims involving different
14 parties cannot be joined together in one complaint if the facts
15 giving rise to the claims are not factually related in some way --
16 that is, if there is not "similarity in the factual background."
17 Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997). General
18 allegations are not sufficient to constitute similarity when the
19 specifics are different. Id.

20 In sum, even when Plaintiff's claims are liberally construed,
21 Plaintiff has failed to provide sufficiently simple, concise and
22 direct information for the Court to determine whether Plaintiff's
23 allegations state cognizable claims for relief with respect to each
24 of the named Defendants.

25 Moreover, Plaintiff appears to be seeking relief that concerns
26 not only the conditions of his confinement but also the validity of
27 his conviction. The latter type of relief cannot be pursued in a
28

1 civil rights complaint but must be brought in a habeas corpus
2 petition. See Hill v. McDonough, 547 U.S. 573, 579 (2006).

3 Accordingly, Plaintiff's amended complaint is DISMISSED.
4 Plaintiff may file a second amended complaint in which (1) he
5 clearly links each Defendant to the alleged injury or injuries for
6 which that Defendant is alleged to be responsible, (2) does not
7 raise unrelated claims against different Defendants, and (3) does
8 not challenge the validity of his conviction. While Plaintiff
9 must, in filing his amended complaint, provide sufficient
10 information to give Defendants fair notice of the nature of the
11 claims against them, Plaintiff should not provide a lengthy
12 narrative with respect to each Defendant to satisfy the pleading
13 requirements of Rule 8. Instead, Plaintiff should provide a
14 concise statement identifying each Defendant and the specific
15 action or actions that Defendant took, or failed to take, that
16 allegedly caused the deprivation of Plaintiff's constitutional
17 rights, as well as the injury resulting therefrom.

18 Finally, Plaintiff is advised that the Court will not consider
19 as part of Plaintiff's pleadings in this matter any information
20 sent to the Court in a letter, a document titled "Statement of
21 Claim" or any other document that is not a pleading signed under
22 penalty of perjury. Rather, all of Plaintiff's claims must be
23 included in the second amended complaint, which will supercede all
24 of Plaintiff's prior pleadings in this matter.

25 CONCLUSION

26 For the foregoing reasons, the Court orders as follows:

- 27 1. Plaintiff's amended complaint is DISMISSED.
28

1 2. Within thirty (30) days from the date of this Order,
2 Plaintiff may file a second amended complaint in order to cure the
3 deficiencies noted above. Plaintiff shall use the court's civil
4 rights complaint form, a copy of which is provided herewith, and
5 include in the caption both the case number of this action,
6 No. C 11-1688 CW (PR), and the heading "SECOND AMENDED COMPLAINT."

7 If Plaintiff fails to timely file a second amended complaint
8 in conformity with this Order, the case will be dismissed without
9 prejudice and will be closed.

10 3. It is Plaintiff's responsibility to prosecute this case.
11 Plaintiff must keep the Court informed of any change of address and
12 must comply with the Court's orders in a timely fashion. Failure
13 to do so may result in the dismissal of this action, pursuant to
14 Federal Rule of Civil Procedure 41(b), for failure to prosecute.

15 4. The Clerk of the Court shall provide Plaintiff with a
16 blank civil rights complaint form.

17 IT IS SO ORDERED.

18 Dated: 9/12/2011



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

IN RE DARRYL WILLINGHAM,

Case Number: CV11-01688 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

IN RE DARRYL WILLINGHAM et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 12, 2011, I SERVED a true and correct copy(ies) of the attached, and **a blank civil rights complaint form** by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Darryl Willingham AE8217
3D22
San Quentin State Prison
San Quentin, CA 94974

Dated: September 12, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California